

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into Statements
By SBC Communications and SBC Pacific Bell
Regarding Potential Reductions to Service
Quality.

I. _____

ORDER INSTITUTING INVESTIGATION**I. Summary**

This proceeding is opened to determine if the Commission's service quality standards will be met by Pacific Bell (Pacific) in light of recent announcements about layoffs. SBC Communications, Inc. (SBC), parent of SBC Pacific Bell (Pacific), stated that it will be laying off 11,000 employees nationwide and cutting capital expenditures considerably. SBC's press release states that 9,000 of the job cuts will take place in the final quarter of 2002, with the remainder to occur in early 2003. According to press reports, approximately 3,000 jobs will be eliminated in California.

Statements by SBC representatives to this Commission, other regulatory agencies, and the media indicate that the layoffs and reduced capital spending may jeopardize the quality of service received by the customers of Pacific. This proceeding will determine whether SBC's announced cutbacks will reduce Pacific's compliance with this Commission's service quality standards. Based on our findings, we will determine if Pacific has met these service quality standards. If we find that Pacific is meeting the standards, we may simply close this

proceeding. If we find that Pacific has not met the standards, we will undertake a second phase to this proceeding to determine if monetary fines are warranted.

II. Background

On September 26, 2002, SBC announced that it would be eliminating 11,000 jobs nationwide and would be reducing capital spending by an unspecified amount. The SBC press release refers to layoffs of “highly-trained workers.” News stories the following day reported that SBC officials announced that 3,000 of the layoffs would be in California.

Pacific’s President, External Affairs, Lora Watts, is quoted in one newspaper as stating, “We will try to maintain our customer service levels, but we face some difficult decisions that could someday have an impact on our service.”¹ Another newspaper story included a nearly identical quote from Ms. Watts.² A third newspaper reported that “[c]ompany executives conceded that the steep cuts could take their toll on customer service, repairs and other areas that affect customers.”³

These statements to the media are consistent with statements that SBC and Pacific officials had been making to regulators in California and elsewhere, as part of an effort to convince regulators to change prices and policies associated with unbundled network elements (UNEs).⁴ In a letter to all five CPUC

¹ *Los Angeles Times*, Sept. 27, 2002.

² *Contra Costa Times*, Sept. 27, 2002.

³ *San Francisco Chronicle*, Sept. 27, 2002.

⁴ This proceeding will not address in any way the CPUC’s policies or decisions with respect to UNE pricing. Those issues are being addressed in the UNE re-examination proceeding, Application (A.) 01-02-024 *et al.*

commissioners dated September 9, 2002, Ms. Watts asserted that “these [UNE] pricing issues will jeopardize our ability to provide world-class customer service and service reliability.” A briefing package that SBC officers, including its Chairman, Chief Financial Officer, and President, apparently presented to FCC officials on or before the September 26, 2002 announcement, claims that the impacts of the UNE policies challenged by SBC include the following: “Reduced Service Quality” and “Reduced Ability to Provide Service to all Customers”.⁵

On the other hand, in a letter to all five CPUC Commissioners dated October 18, 2002, Chuck Smith, President and CEO of Pacific, states that “You have my assurance, and the assurance of all of senior management, we will maintain our service levels to meet our customers’ needs and CPUC standards. The letter goes on to describe a loss of retail access lines and revenues and that Pacific “must match our workforce to our load.” Similarly, in a Los Angeles Times interview printed October 28, 2002, Ed Whitacre, chairman of SBC describes where the layoffs are expected in California with the following: “Most of those people are coming from the side that does new capital investment. So these are not people that affect day-to-day service, like installation, maintenance. These are people who do new construction. We're striving very hard not to have any impact on service, and we can pull that off.”

⁵ “UNE-P: Impacts and Implications”, Prepared for the Federal Communications Commission, (undated), p. 24. SBC is also the parent of Pacific’s affiliate SBC Advanced Solutions, Inc. (ASI), which provides DSL service in California. The briefing package raises the question of whether ASI’s ability to serve its customers in California will also be affected by the cutbacks.

III. Discussion

There appear to be conflicting statements from SBC and Pacific officers. The Commission is not willing to jeopardize service quality as some statements might suggest.

When a utility itself foresees and announces potential cutbacks in service quality, the Commission has a duty to investigate whether and how service will indeed be affected. Public Utilities Code Section 451⁶ requires that the Commission ensure that:

public utilities furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities . . . as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees and the public.

SBC's and Pacific's public statements suggest the possibility that SBC and Pacific know that the announced cutbacks may jeopardize service quality in California. This investigation will afford an opportunity to determine whether this is indeed the case. We believe a formal investigation sends the appropriate signal that the Commission does not condone voluntary actions by a utility that the utility knows will undermine its ability to provide high quality service. We note that in a 1976 decision involving Pacific's predecessor, the Commission found that the utility violated Section 451 when it purposely withheld capital spending necessary to meet service demands in order to "safeguard earnings."⁷

⁶ All statutory references are to the Public Utilities Code unless otherwise stated.

⁷ *Re Pacific Telephone & Telegraph Co.*, 80 CPUC 599, 613-615 (1976). In that decision, the Commission levied a penalty by reducing Pacific's allowable rate of return.

The purpose of this proceeding is to determine if service quality standards are not being met due to layoffs. Because Pacific suggests in some of its public statements that service quality may be degraded, we will step up our monitoring of service quality standards as they relate to Pacific. Most of our standards are based upon data compiled over a month. Some reports lag by several months. Other reports are by exception only. We will have the Telecommunications Division coordinate with Pacific on the specific details, but we intend more timely reporting (such as two weeks after the close of a month) and positive reporting (as opposed to exception reporting) for the purpose of this proceeding. Additionally, Telecommunications Division staff should not hesitate to make on-site visits to aid in its determination of service quality.

By the third quarter of 2003, we plan to re-look at the question of whether service quality is degraded below our standards by a review of the data collected by staff. Should the data indicate that Pacific continued to meet our service quality standards, we may simply close the proceeding and the more stringent reporting requirements will likely be no longer be required. However, should the data indicate that Pacific failed our service quality standards (due to the layoffs and not, for example, a flood or earthquake) we shall continue our stepped-up monitoring and commence a new phase of this proceeding. This phase will consider whether a monetary fine is warranted, and if so, the level of that fine.

IV. Information Required from Pacific

Attachment A contains an initial list of questions posed to Pacific and ASI.⁸ In light of SBC's announcement that most of the job cuts will take place in the fourth quarter of 2002, it is necessary to obtain this information quickly. Accordingly, we direct Pacific and ASI to respond to these questions within seven days of the issuance of this order instituting investigation (OII). We note that most of the questions are identical or nearly identical to certain data requests that were posed to Pacific and its affiliates in an October 4, 2002 letter from the Director of the CPUC's Telecommunications Division. As a result, Pacific and its affiliates have already had several weeks to prepare answers to these questions. Furnishing the responses to the questions in this proceeding will build a public record upon which the Commission may base any actions it believes are warranted.

Pacific's and ASI's responses shall be verified by officers of those corporations. If any information necessary to provide a complete answer to any question is in the possession of an affiliate of Pacific or ASI, including their parent, SBC, then Pacific and ASI shall obtain from the affiliate the necessary information and provide it to the Commission, in accordance with Section 314(b).⁹

⁸ By ruling of the assigned commissioner or assigned administrative law judge, Pacific or its affiliates may be directed to provide responses to additional questions for the record of this proceeding.

⁹ The Commission also has the authority to seek the information directly from the affiliate in possession of the information. At this time, however, we choose to impose the obligation to obtain the required information on Pacific.

Pacific and ASI shall serve a notice of availability¹⁰ of the answers to the questions on the service list for the OII. Any party on the service list may then request to be provided a copy of its answers.

If Pacific or ASI believes that any of the materials it provides in response to the questions in Attachment A must be kept confidential in order to avoid competitive harm, Pacific or ASI may file a motion seeking confidential treatment of such materials. We note that, as this is a matter of significant public interest, Pacific or ASI should limit its requests for proprietary treatment to only those documents, or portions thereof, whose release would cause significant competitive harm. Pending a ruling on any motion for confidential treatment, Pacific or ASI may redact from the materials they provide to parties (other than the Commission's Office of Ratepayer Advocates) and the public record any documents or portions thereof for which they seek confidentiality. If any party seeks access to material for which confidentiality is requested, Pacific and ASI shall promptly afford the party an opportunity to sign a nondisclosure agreement. Upon receiving a signed nondisclosure agreement, Pacific and ASI shall promptly provide the party a complete, unredacted copy of their responses to the Attachment A questions.

V. Respondents

Pacific and ASI shall be respondents to this OII.

¹⁰ As described in Rule 2.3 of the Commission's Rules of Practice and Procedure.

VI. Preliminary Scoping Memo

This proceeding shall be conducted in accordance with Article 2.5 of the Commission's Rules of Practice and Procedure (Rules).¹¹ As required by Rule 6(c)(1), this order includes a preliminary scoping memo¹² as set forth below.

The scope of this investigation is: (1) to determine if the Commissioner's service quality standards will be met by Pacific in light of the announced layoffs and (2) should we find that Pacific has failed to meet our service quality standards, then we will consider the level of fines, if warranted. The final scope of the issues will be determined in one or more scoping rulings issued by the assigned Commissioner pursuant to Rules 6(c)(1) and 6.3.

Pursuant to Rule 6(c)(1), we determine that the category of this proceeding is "ratesetting" as that term is defined in Rule 5(c),¹³ and that there may be a need for evidentiary hearings.

The preliminary schedule for this proceeding is as follows:

Event	Time after Issuance of OII
Pacific and ASI provide verified responses to questions in Attachment A	14 days
Parties file with CPUC Docket Office notices of participation (described below)	14 days

¹¹ The Rules of Practice and Procedure are posted on the Commission's web site at www.cpuc.ca.gov.

¹² Rule 5(m) defines "scoping memo" as an order or ruling describing the issues to be considered in a proceeding and the timetable for resolving the proceeding.

¹³ Rule 5(c) defines "ratesetting" proceedings as proceedings in which the Commission sets or investigates rates or establishes a mechanism that in turn sets the rates for a specifically named utility or utilities.

Parties file comments on OII, preliminary scoping memo, and on Pacific and ASI responses	21 days
Parties file reply comments	28 days
Final Scoping Memo issued	42 days
Prehearing Conference	To be determined (TBD)
Evidentiary Hearings	TBD
Proposed Decision	TBD

The full schedule for this proceeding cannot be set forth at this time, as the appropriate procedural steps will depend on the responses to Attachment A and the comments of the parties.

Parties may file and serve opening comments on this OII no later than 21 days from the issuance of today's order, and reply comments no later than 28 days from the effective date of today's order. Parties should address whether the Commission should take any steps to protect retail or wholesale service quality and, if so, what those steps should be. As required by Rule 6(c)(1), parties shall also include in their opening comments any objections they may have regarding (1) the determination that evidentiary hearings are required, and (2) the preliminary scope and timetable for this proceeding.

Following the receipt of comments, the assigned Commissioner will issue a ruling pursuant to Rules 6(c)(1) and 6.3. The ruling will address the scope of the proceeding, the need for evidentiary hearings, and the schedule for resolution of issues. The ruling will also designate a presiding officer as required by Rule 6(c)(1).

VII. Service and Availability of This Order

This order shall be served on the service lists for Rulemaking (R.) 01-09-001/Investigation (I.) 01-09-002 (2001 New Regulatory Framework review of Pacific and Verizon California, Inc.), R.98-06-029 (service quality

rulemaking for all telecommunications carriers), and Case 02-01-007/I.02-01-024 (complaint/investigation regarding unauthorized charges by ASI). These service lists include the respondent utilities Pacific and ASI.

This order will be available to the public on the Commission's web site (www.cpuc.ca.gov). A copy of this order may also be obtained from the Commission's Central Files Office in San Francisco [(415) 703-2045]; and from the Commission's Public Advisor Offices in Los Angeles [(213) 897-3544]; and San Francisco [(415) 703-2074].

VIII. Participation and Service List

To facilitate broad public participation in this proceeding, we will allow parties to formally participate by mailing a notice of participation to the Commission's Process Office. The address of the Commission's Process Office is Room 2000, 505 Van Ness Avenue, San Francisco, CA 94102. The notice of participation must include all of the following information:

- The proceeding number shown on the first page of this order.
- The name, address, and telephone number of each person to be placed on the service list. Parties are encouraged to provide an e-mail address. Any party that provides an e-mail address will be required to (1) serve their pleadings by e-mail on other parties that provide an e-mail address, and (2) receive the pleadings of other parties by e-mail.
- The person, entity, or organization for which the notice is being filed.
- The category of participation. There are three categories of participation: Appearance, State Service, and Information Only. Those in the Appearance category are parties with all attendant rights and obligations. Appearances receive exhibits, testimony, and all formally filed documents, including pleadings, motions, rulings, proposed decisions, and Commission decisions. Appearances must serve their pleadings on all other

Appearances and those in the State Service category. Persons should not indicate that they are an Appearance unless they intend to actively participate in this proceeding by filing comments or testimony. Any Appearance that fails to actively participate may be moved to the Information Only portion of the service list. The State Service category consists of persons employed by the State of California. Those in the State Service category receive the same documents as appearances, but they are not parties to the proceeding and cannot file pleadings. Those in the Information Only category receive all Commission-generated documents at no charge, such as notices of hearings, rulings, proposed decisions, and Commission decisions. Appearances are not required to serve their pleadings on those in the Information Only category.

Parties may also seek to formally participate in this proceeding by filing a notice of party/non-party status at a PHC or evidentiary hearing. Any person interested in participating in this rulemaking but unfamiliar with the Commission's procedures should contact the Commission's Public Advisor Offices in Los Angeles [(213) 897-3544] or San Francisco [(415) 703-2074].

Parties should note that it is not necessary to formally participate in this proceeding in order to monitor major developments. Significant documents in this proceeding (e.g., rulings and decisions) will be posted on the Commission's web site. There is no need to mail the previously described notice of participation to the Process Office to monitor in this fashion.

The Process Office will compile an initial service list based on the notices that it receives within seven days of the issuance of this OIL.¹⁴ The service list for

¹⁴ The Process Office periodically updates service lists to correct errors and to make changes at the request of the parties on the list or the assigned ALJ.

this proceeding may be obtained from the Commission's web site (www.cpuc.ca.gov) or the Process Office [(415) 703-2021].

The assigned Commissioner and the assigned ALJ shall have ongoing oversight regarding the procedures governing parties' participation and the service list. They may revise these procedures and the service list, as necessary.

IX. Electronic Service

Any Appearance that provides an e-mail address shall serve and receive all pleadings by e-mail in Microsoft Word format. There is no need to serve hard copies of pleadings on any party listed in the Appearance and State Service categories of the service list if that party has provided an e-mail address. However, if a party in the Appearance or State Service categories has not provided an e-mail address, then that party must be served with a hard copy.¹⁵

X. Ex Parte Communications

This proceeding is subject to Rule 7, which specifies standards for engaging in ex parte communications and the reporting of such communications. Pursuant to Rule 7(a)(3), ex parte communications will be allowed in this proceeding consistent with the restrictions and reporting requirements set forth in Rules 7(c) and 7.1. The restrictions and reporting requirements in Rule 7(c) and 7.1 shall remain in effect unless and until the ratesetting categorization for this proceeding is modified by the Commission pursuant to Rule 6.4.

¹⁵ This order does not affect the Commission's Rules regarding the filing of documents at the Commission. All documents filed at the Commission must be tendered in paper form as described in Rule 2 et seq.

O R D E R**IT IS ORDERED** that:

1. An investigation is instituted on the Commission's own motion for the purpose of (a) determining if the Commission's service quality standards are being met by Pacific in light of the announced layoffs and (b) should we find that Pacific has failed to meet our service quality standards, then we will consider the level of fines, if warranted.

2. Pacific and ASI are made respondents to this proceeding.

3. Within 14 days of the issuance of this order, Pacific and ASI shall file responses to the questions listed in Attachment A of this order. Pacific and ASI shall serve the responses on the service list in accordance with the procedures set forth in the text of this order.

4. The general scope of this proceeding is described in the text of this order. The exact scope of this proceeding will be determined in one or more scoping rulings issued by the Assigned Commissioner.

5. The preliminary schedule for conducting this proceeding, as can be determined at this time, is set forth in the text of this order. The Assigned Commissioner and the assigned Administrative Law Judge (ALJ) shall augment the schedule as necessary and may revise the schedule as they determine to be appropriate.

6. The category of this investigation is determined to be "ratesetting" as this term is defined in Rule 5(c) of the Commission's Rules of Practice and Procedure (Rule).

7. It is determined that there is a need for evidentiary hearings. Based on the opening and reply comments of the parties, the Assigned Commissioner may determine that evidentiary hearings are not necessary. The time, place, and

scope for evidentiary hearings, if any, shall be set in one or more rulings issued by the Assigned Commissioner or the assigned ALJ.

8. Parties that seek to participate in this proceeding should mail a notice of participation to the Commission's Process Office. The address of the Process Office is Room 2000, 505 Van Ness Avenue, San Francisco, CA 94102. The notice must include all the information identified in the body of this order.

9. The Process Office shall create an initial service list based on notices of participation received by the Process Office on or before seven days after the issuance of this order. Parties may obtain the service list from the Commission's web site (www.cpuc.ca.gov) or by contacting the Process Office [(415) 703-2021].

10. The Assigned Commissioner and the assigned ALJ shall have ongoing oversight regarding the procedures governing participation in this proceeding. They may revise these procedures, as necessary. The Assigned Commissioner and the assigned ALJ shall also have ongoing oversight of the service list. They may revise the service list or the procedures governing the list, as necessary.

11. Any party listed in the "Appearance" category on the service list that provides an e-mail address shall serve and receive all pleadings by e-mail in Microsoft Word format. There is no need to serve hard copies of pleadings on any party listed in the Appearance and State Service categories of the service list if that party has provided an e-mail address. However, if a party in the Appearance or State Service categories has not provided an e-mail address, then that party must be served with a hard copy.

12. All documents filed at the Commission must be tendered in paper form as described in Rule 2 et seq.

13. Opening comments shall be filed and served no later than 21 days from the issuance of today's order. Reply comments shall be filed and served no later

than 28 days from the effective date of today's order. In addition, as required by Rule 6(c)(1), parties shall include in their opening comments any objections they may have regarding (i) the determination that evidentiary hearings are required, and (ii) the preliminary scope and schedule for this proceeding.

14. This order shall be served on the service lists for Rulemaking (R.) 01-09-001/Investigation (I.) 01-09-002, R.98-06-029, and Case 02-01-007/I.02-01-024.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A**Questions Directed to Respondents**

NOTE: If any information necessary to provide a complete answer to any question is in the possession of an affiliate of Pacific Bell Telephone Co. (Pacific), including Pacific's parent, SBC Communications, Inc. (SBC), then Pacific shall obtain from the affiliate the necessary information and provide it to the Commission, in accordance with Public Utilities Code Section 314(b). Pacific shall promptly furnish a copy of these data requests to any affiliates that may have relevant information or documents.

Please provide the following information relating to the job and capital spending cuts announced by SBC on September 26, 2002 ("cutbacks"):

1. Please specify:
 - a. The total number of jobs by job title that will be eliminated at Pacific, stated separately for management and non-management.
 - b. The number of jobs by job title that will be eliminated through voluntary attrition (specify by "retirement" or "other") and through involuntary separation (dismissal, firing, and/or layoff) by each department at Pacific.
 - c. The schedule of job reductions by job title stated separately for management and non-management for each department within Pacific.
2. Please specify separately for each affiliate of Pacific providing telecommunications services in California:
 - a. The total number of jobs by job title that will be eliminated at each affiliate, stated separately for management and non-management.
 - b. The number of jobs by job title that will be eliminated through voluntary attrition (specify by "retirement" or "other") and through involuntary separation (dismissal, firing, and/or layoff) by each department at the affiliate.
 - c. The schedule of job reductions by job title and by each department within the affiliate.
3. List the actual capital expenditures for each year from 1997 to 2001 for Pacific Bell in California. For 2002, list actual expenses incurred plus an estimate for the remainder of the year. List the expected budgeted amount for capital expenditures for 2003.
4. On a monthly basis, from 1997 to the present, provide the number of new service orders and the number of employees (full-time equivalents) to handle the call volume. Show the corresponding number of employees related to this function working on outside plant.

5. On a monthly basis, from 1997 to the present, provide the number of repair orders and the number of employees (full-time equivalents) to handle the call volume. Show the corresponding number of employees related to this function working on outside plant.
6. On a monthly basis, from 1997 to the present, provide the number of access lines in service. Segregate this total number by customer class (e.g., business, residence, Centrex, etc.).
7. On an ongoing basis, while this proceeding is open, for each G.O. 133-B standard that is reported on an exception basis, provide an affidavit that the standard was met for each of the past 24 months or provide a copy of the exception report.
8. On an ongoing basis, while this proceeding is open, provide Telecommunications Division with an affidavit that all the standards that are filed on an exception basis have been met or provide copies of the exception report.
9. Provide the number of employees (full-time equivalents) and the associated dollar amount of expenses used to perform maintenance. State separately maintenance for switching and outside plant. Provide the data for each year from 1997 to 2001 for Pacific Bell in California. For 2002, list actual expenses incurred plus an estimate for the remainder of the year. List the expected budgeted amount for maintenance for 2003.

(END OF ATTACHMENT A)